

#13
7-29-03



UNITED STATES PATENT AND TRADEMARK OFFICE

MAILED

JUL 29 2003

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
www.uspto.gov

TECHNOLOGY CENTER 2100

Paper No. 13

Michael B. Lasky
Altera Law Group, LLC
6500 City West Parkway – Suite 100
Minneapolis, Minnesota 55344-7701

In re Application of: McKean et al.)
Application No. 09/671,002) DECISION ON PETITION TO
Attorney Docket No. SJ09-2000-068US1) WITHDRAWAL HOLDING OF
Filed: September 27, 2000) ABANDONMENT UNDER 37 CFR §
For: METHOD AND APPARATUS FOR) 1.181(a)
MIGRATING DATA HAVING A FORMAT)
OF A FIRST TYPE TO A FORMAT OF A)
SECOND TYPE)

This is a decision on the petition filed on June 10, 2003 to withdraw the holding of abandonment under 37 CFR § 1.181(a) (Paper No. 11) mailed on May 6, 2003. The abandonment was based upon applicants' failure to respond to the final rejection mailed September 24, 2002.

Applicable Prosecution History

Jan 12, 2001	Change of address filed (Paper No. 2)
Apr 14, 2002	Change of address submitted via Customer No. 22865 (Paper No. 5)
Sep 24, 2002	Final rejection mailed (Paper No. 8)
Apr 23, 2003	Change of address filed in response to examiner query. Address submitted is duplicate of January 12, 2001 filing.

Issues

The petition includes statements from Mr. Michael B. Lasky that the Office communication mailed September 24, 2002 was not received; that a change of address was submitted January 10, 2001 which is evidenced by a postcard receipt date stamped "January 12, 2002 [sic]"; a statement the practitioner received the first action on the merits but not the subsequent final rejection; and that a search of the file jacket and docket records indicated the Office action was not received. The practitioner has attached numerous sheets of a docket printout for Office communications for the date the non-received Office communication would have been entered had it been received and docketed.

Decision

In the absence of any apparent irregularity associated with the mailing of an Office communication, the Office presumes the communication was properly mailed to the address of record. According to MPEP §711.03(c), the showing required to establish nonreceipt of an Office action includes the following:

- a) a statement from the practitioner that the Office action was not received,
- b) a statement from the practitioner attesting to the fact that a search of the file jacket and docket records indicates the Office communication was not received,
- c) a copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed, and
- d) a reference to the docket record in the practitioner's statement.

The practitioner's statements should be made in regard to records the *address of record at the time of the mailing*. The original declaration set forth the address for Bren Road East. The change of address filed in January 2001 for 6500 City West Parkway is, in fact, in the application file and was used for the mailing of the first action on the merits dated April 25, 2002. However, the Office file also shows evidence the practitioner filed a change of address for customer number 22865 on April 14, 2002 ***which changed the address back to Bren Road East***. While the final rejection may have been sent to the "wrong" address, according to the practitioner, the evidence suggests the practitioner introduced an error in the correspondence address via a customer number change. Therefore, it appears the July 2002 paper was properly mailed to the address changed by the practitioner on April 14, 2002.

The petition has not overcome the presumption of receipt. The file jacket and docket records should be for the Bren Road East address at the time of the mailing of the final rejection.

The petition is **DISMISSED**.

If petitioners desire further review of this decision, petitioners should file a Request for Reconsideration within two (2) months of the mailing date of this decision. Telephone inquiries should be directed to the undersigned at (703) 308-0269.



Josie A. Ballato
Special Programs Examiner
Technology Center 2100
Computer Architecture, Software, and Information Security